

COMMITTEE HEARING ON BILL 14-718

**“DEPARTMENT OF INSURANCE AND SECURITIES
REGULATION MERGER REVIEW AMENDMENT ACT OF 2002”**

**THE COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS
SHARON AMBROSE, CHAIR
COUNCIL OF THE DISTRICT OF COLUMBIA**

JUNE 24, 2002

**TESTIMONY OF ARABELLA W. TEAL
PRINCIPAL DEPUTY CORPORATION COUNSEL**

OFFICE OF THE CORPORATION COUNSEL

Good afternoon Chairman Ambrose and members of the Committee on Consumer and Regulatory Affairs. I am Arabella Teal, Principal Deputy Corporation Counsel, and I am here today on behalf of the Executive and the Corporation Counsel, Robert Rigsby, to testify in support of Bill 14-718, the “Department of Insurance and Securities Regulation Merger Review Amendment Act of 2002”.

As you know, the Commissioner of the Department of Insurance and Securities Regulation and the Corporation Counsel are both responsible for the regulatory review of the proposed conversion and subsequent acquisition of Group Hospitalization and Medical Services, Inc. (“GHMSI”) by WellPoint Health Networks, Inc. (“WellPoint”). Before I discuss the Bill before the Committee, I would like to provide an outline to the Committee of the statutory duties that have been placed upon OCC. I would also like to briefly discuss OCC’s process for conducting its regulatory review.

Statutory Duties of the Corporation Counsel

In 1997 the Council enacted the Healthcare Entity Conversion Act¹ (“Conversion Act”), a law that codified the common law role played by all Attorneys General in protecting the assets of charitable institutions. Pursuant to § 3 (b) of the Hospital and Medical Services Corporation Regulatory Act² – the law

¹ Effective October 23, 1997 (D.C. Law 12-32; D.C. Official Code § 44-601 et seq.)

² Effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3502 (b)).

that governs the operation of GHMSI in the District – the Corporation Counsel may not approve GHMSI’s conversion to for-profit status unless the requirements of the Conversion Act have been met. The Conversion Act requires the Corporation Counsel to “adequately protect” the charitable assets held by GHMSI. I would note that the principle that GHMSI holds charitable assets is derived from the fact that GHMSI’s value has been built through its special status as a federally chartered “charitable and benevolent institution” that has enjoyed significant tax breaks from the District over the years since its formation.

In determining whether the charitable assets of GHMSI have been adequately protected, the Conversion Act requires the Corporation Counsel to consider a number of factors during his review of the transaction. These include:

- (1) Whether the **conversion is permitted under District or federal laws** governing nonprofits; (2) Whether GHMSI exercised **due diligence** in deciding to sell itself to WellPoint; (3) Whether the **procedure used** by GHMSI in making its decision **was fair and objective**, and whether appropriate independent expert assistance was used; (4) Whether all parties to the transaction are **in full compliance with the laws** of those jurisdictions where they do business; (5) Whether any of the parties to the transaction have **violated applicable state or federal laws**; (6) Whether the WellPoint is **financially sound** and has the financial and management capacity to operate GHMSI; (7) Whether the WellPoint

has disclosed all potential **conflicts of interest**; (8) Whether the conversion will result in the **enrichment of any person**; (9) Whether the GHMSI will receive **reasonably fair value** for its assets and whether the market value of those assets has not been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease; (10) Whether **charitable funds are placed at unreasonable short-term or long term risk**; (11) Whether **any management contract under the conversion is for reasonably fair value**; (12) Whether the **charitable assets have been placed in a charitable trust controlled independently of WellPoint or other parties to the conversion and used for appropriate charitable purposes consistent with the healthcare entity's purposes or operation in the affected community**; and (13) Whether a **right of first refusal has been retained** by GHMSI to permit the repurchase of the assets by a successor nonprofit person if and when the for-profit entity that results from conversion is subsequently proposed for sale, conversion, or merger.

By asking all of these questions and obtaining hard evidence of the answers, the Corporation Counsel will prevent these charitable assets – the public’s property – from being lost in the transaction. Historically, the conversions of Blue Cross Blue Shield companies around the country have resulted in the full gamut of outcomes, ranging from no charitable benefit being acknowledged to sizeable charitable foundations being created that now support a variety of public health

initiatives. Fortunately, given the District's Conversion Law, the authority of the Corporation Counsel to protect the public's property, and make sure it keeps working for the citizens of the District, is clear.

OCC's Process for Conducting its Regulatory Review

I would like to talk generally about the review process at this time. Because of the importance of this transaction – a transaction that, if completed, could result in the loss of the District's open enrollment insurer while at the same time resulting in the creation of a conversion foundation that is capitalized with hundreds of millions of dollars – OCC, and the executive branch as a whole, is committed to a review process that is thorough, fair, and transparent and provides for full public participation.

In addition to the public fora that have been held by DISR to date, OCC plans to hold its own public fora to provide an opportunity for interested parties to voice their opinions and concerns on the issues that relate to OCC's responsibility to protect the charitable assets now held by GHMSI. We believe the timing of these public fora should turn on when the applicants file an amended (and more complete) application with DISR. In that way, we can ensure that the public will be able to comment substantively with the benefit of having the most information possible. Thereafter, OCC will hold a formal public hearing to take testimony and then decide whether to approve or disapprove the application for conversion. That

public hearing will not be held until OCC has finished its investigation and has obtained a formal valuation report regarding GHMSI's charitable assets. Under the Conversion Act, once the Commissioner of DISR sends a request to OCC to make its final determination, we generally have 60 days to make a decision.

To keep the public abreast of our work, we are establishing a document room to enable interested parties to review the many thousands of pages that will be generated by the review. We also plan to make important information and documentary materials available online.

Additional public education, notices, and information will also be made available as needed. The release of these materials will be coordinated with DISR's efforts to keep the public informed. To date we have received a number of written comments from the public and interested public advocacy groups and we encourage everyone with a viewpoint on the transaction to let us know about it. OCC staff remains available to meet with interested groups or individuals as well as with your Committee's staff members.

To do our work, the Hospital and Medical Services Corporation Regulatory Act permits DISR and OCC to retain experts to assist them in reviewing this complex transaction, all at WellPoint's expense. To date, outside legal counsel has been retained for each agency. With respect to OCC's statutory obligations, we anticipate retaining an investment banker to develop a valuation of GHMSI.

OCC's efforts will be coordinated with those of DISR to ensure that the process is smooth and understandable for the public. The staffs of both agencies work together on this matter daily.

Finally, turning to Bill 14-718, OCC supports the bill because it will give additional flexibility to DISR for this complex regulatory review process. That flexibility, in turn, will help ensure the coordination of both agencies' public hearings so that the public can participate fully in both hearings.

While I cannot address the particular merits of the GHMSI/WellPoint transaction because OCC, as a decision-making agency responsible for reviewing the transaction must maintain its impartiality throughout the process, I would be happy to answer the questions the committee may have at this time.